



RIGHTS STUFF

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Firing An Employee On FMLA Leave

Michael Daugherty began working for Wabash Center, Inc., a nonprofit center serving adults and children with developmental disabilities, in 1999. He began as a maintenance assistant and eventually was promoted to vice president of information technology. He received strong performance reviews and a bonus for showing leadership on a project.

His work-related problems began in 2006, when he got involved in "e-mail wars" with several Wabash employees and some staff complained about his management approach. Daugherty received a written reprimand for sending abusive e-mails to co-workers and for his management style. He acknowledged his professional shortcomings and drafted his own corrective action plan, even though he said he thought the written reprimand was not warranted. At the meeting when the reprimand was discussed, Daugherty's supervisor said he was revoking his permission for Daugherty's planned month-long vacation because of pressing agency business.

Before the corrective action plan was discussed, Daugherty left the meeting to talk to his doctor. He came back with a note from his doctor saying he needed to be off work for two weeks for an unspecified medical illness. He completed a form asking for Family and Medical Leave Act (FMLA) leave without specifying what his health condition was. Rather, he described personnel conflicts at Wabash, saying he was under a tremendous amount of stress and that his much needed vacation had been cancelled. He was

granted his request for two weeks off.

While Daugherty was off work, Wabash learned that he had used the agency credit card without authorization to have a generator delivered to his home. The agency did some more digging and found out that Daugherty had made at least five unauthorized purchases with the agency card. He later acknowledged he had failed to get the proper authorization, but claimed the purchases were above-board because he had not meant to keep the items for himself.

A few days later, a supervisor noticed that some e-mails to and from Daugherty were missing from his computer. That same day, two Wabash servers crashed. The agency called in outside experts because Daugherty was not present to fix the problem. The experts said that Daugherty had failed to do routine back-ups. The agency suspected that Daugherty might be sabotaging their computers from home and had the experts analyze their computer security. They did and found numerous problems.

On July 3, the day Daugherty was scheduled to return to work, Wabash gave him a new corrective action plan to sign. He refused, saying that signing it would be "work" and that he was not supposed to work while on medical leave. He gave Wabash a new order from his doctor for more medical leave. Wabash granted his request. Wabash asked Daugherty to

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Private Prison Settles Sexual Harassment Case

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced that it had settled an unusually egregious sexual harassment case against a private prison in Colorado.

According to the EEOC's press release, a woman officer at the prison complained that a male co-worker had sexually harassed her. She was then placed in an isolated location, where she was raped by the man about whom she had complained. The prison's chief of security forced a female correctional officer to have sex with him, which she did to keep her job. The chief later resigned, but his replacement, too, was the subject of

numerous written complaints of sexual harassment, including complaints that he regularly commented on female employees' bodies and touched female officers inappropriately. A female correctional officer was coerced into performing oral sex and later intercourse with a male captain. Another female officer said her supervisor repeatedly commented about her looks and told her that her husband could do her job better than she could. He told her she had to sleep with him or lose her job; she resigned.

Female employees said that male employees at the prison openly viewed pornography in the workplace, made demeaning sexual com-

ments about the female employees and regularly told sexual jokes. They said that if they complained, they were ostracized, their work was closely scrutinized, they were accused of misconduct and they were given the worst and most dangerous assignments.

Under the settlement, Dominion Correctional Services, LLC, will pay \$1.3 million to the 21 female former workers.

The case is EEOC v. Dominion Correctional Services, LLC and Corrections Corporation of America, Civ. No. 1:06-CV-01956-KVH (U.S. D. Ct. CO. 2009). ♦

FMLA Leave (continued from page 1)

stay off the agency network while on leave and to give them his keys and passwords. He said, "I'd rather not," and refused later requests as well.

While Daugherty was on his extended leave, a forensic expert found that Daugherty had deleted more than 5000 files on the day he first invoked medical leave. Wabash then terminated Daugherty, citing his management style, poor IT practices, failure to turn over keys and passwords, missing files and violations of the agency's purchasing protocols. He sued, saying that Wabash had fired him in violation of the FMLA.

Daugherty argued in court that, since he was on approved FMLA leave at the time of his termination, "Wabash was absolutely prohibited from terminating him while he was on leave." As the Court said, "According to Daugherty, even if an

employer discovers a reason to fire an employee during that employee's FMLA leave, the employer must reinstate the employee before then firing him." The Court did not agree that this cumbersome practice was required by law, saying that the right to reinstatement under the FMLA is not unlimited.

The FMLA entitles employees only to the same position they would have otherwise been entitled to but for their leave. The Court said that employers may terminate employees who are on leave "if the employer discovers misconduct that would justify termination had leave not been taken," quoting another case that said, "The fact that the leave permitted the employer to discover the problems cannot logically be a bar to the employer's ability to fire the deficient employee."

The Court said that Wabash presented undisputed evidence that Daugherty had unprofessional e-mail exchanges with other employees, was abusive to his staff, purchased items in violation of company policy, refused to return keys and to disclose passwords and deleted company files from his workstation. Contrary to Daugherty's argument, the Court found that when he was asked to give up his keys and passwords, he was not being asked to "work," he was being asked to make it possible for Wabash to work without him while he was on leave. It was not retaliatory for Wabash to fire him when it had legitimate reasons for the termination which even Daugherty conceded were sincerely held.

The case is Daugherty v. Wabash Center, Inc., 577 F.3d 747 (7th Cir. 2009). ♦



Dress Code Challenged

The Indiana Civil Rights Commission (ICRC) has investigated a Broad Ripple bar, saying the way it enforces its dress code may violate the state law prohibiting race discrimination in public accommodations.

According to Indianapolis media reports, a bar named Landsharks in Broad Ripple prohibits customers from wearing gang attire, loose-fitting pants, single color t-shirts, chains outside of their shirts and picks in their hair - attire arguably more prevalent among members of minority groups.

Joshua Brewster, deputy director of the Indiana Civil Rights Commission, said that the ICRC investigated and found that "the dress code on its face actually has a discriminatory effect, that effect being to exclude a greater proportion of

African-American and other minority patrons as opposed to Caucasian patrons."

The bar's general manager, Neil Campbell, disputed that conclusion. He said, "We have Hispanics and whites we've told the same thing. The dress code is the dress code across the board. We don't care what your race or nationality is. That's our dress code and we're going to stick to it."

The complaint that led to the ICRC's investigation was filed by Marvin Smith from Noblesville. He contended that the dress code itself is not discriminatory, but that the bar applies the dress code in a discriminatory way. He said in his complaint, "One hour prior, the doorman let a Caucasian friend of mine into the establishment, even

though his pants were visibly sagging." He said the doorman simply told his white friend to "pull them up."

Campbell, the bar manager, said "We just want it to be a nice crowd, a decent looking crowd. We want everybody to have a good time."

The ICRC said it's not claiming that the bar's management is racist or biased. If the ICRC can't reach a settlement, it will hold a public hearing before an administrative law judge.

(Article based on www.theindychannel.com/news/21470885/detail.html, entitled "State: Bar's Dress Code May Violate Law" and viewed on 11/2/2009). ♦

City's King Commission Seeks Nominees For MLK Legacy Award

The City of Bloomington's Dr. Martin Luther King, Jr. Birthday Celebration Commission is soliciting nominees for the annual Dr. Martin Luther King, Jr. Legacy Award. The award recognizes and affirms those who have made significant contributions in the areas of race relations, justice and human rights, and is presented annually at the Dr. Martin Luther King, Jr. Birthday Celebration in January.

Nominees must have been Monroe County residents, businesses or advocacy groups for at least one year, and must have been involved in making tangible and meaningful contributions to the improvement of

community condition and the advancement of race relations, justice and/or human rights causes.

Past winners of the Legacy Award include Bloomington United, the Monroe County Branch of the NAACP, Guy and Connie Loftman, the Rev. E.D. Butler, the Rev. Michael Anderson, the Monroe County Racial Justice Task Force, the Bancker History Project, Dr. James E. Mumford, Dr. Charlie Nelms, Kenneth W. Thomas and WFHB Community Radio.

The deadline for nominations is January 8, 2010. Nominations can

be made online at www.bloomington.in.gov/cfrd or forms are available from the City's Community and Family Resources Department, City Hall, 401 N. Morton St., Suite 260. For more information, contact Craig Brenner, Special Projects Coordinator, at 812-349-3471 or brennerc@bloomington.in.gov. ♦





MLK Commission Seeks Volunteer Service Project Proposals

The City of Bloomington's Dr. Martin Luther King, Jr. Birthday Celebration Commission and the City's Volunteer Network invite community organizations to participate in "A Day On! Not A Day Off" on the federal Dr. Martin Luther King, Jr. Holiday, Monday, January 18, 2010.

Applications for funding assistance for service projects are now available on the City's web site at www.bloomington.in.gov/mlk, and the deadline for submittals is Friday, December 11. Groups are asked to plan meaningful projects and other community initiatives to truly engage volunteers.

The King Commission and the Volunteer Network have received funding from the Community Foundation of Bloomington and Monroe County and from Service for Peace

to help pay for project supplies, resources they will make available to community organizations. Groups planning service projects should complete a proposal form so the community can be made aware of projects and funding and volunteer needs.

Bloomington and other communities across the country will celebrate the Dr. Martin Luther King, Jr. Holiday by coming together in service to others. It is in this spirit that the King Commission and the Volunteer Network are encouraging local organizations to offer opportunities for volunteer service.

If you have any questions please e-mail Craig Brenner at brennerc@bloomington.in.gov or Bet Savich at savichb@bloomington.in.gov. ♦

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Rev. Jesse Jackson To Speak At MLK Birthday Celebration

The Rev. Jesse Jackson will be the keynote speaker at the 2010 City of Bloomington Dr. Martin Luther King, Jr. Birthday Celebration. The event will take place on January 18, 2010, at 7 p.m at the Buskirk-Chumley Theater. It will be preceded by a 5 p.m. reception at the First United Methodist Church featuring light refreshments and a display by the winners of the "A Day On! Not A Day Off" web design contest. Both the program and reception are free and open to the public. ♦